

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

HYPER SHOPPES (COLORADO), INC.,  
d/b/a bigg's  
Employer,

and

Case 27-RC-8012

UNITED FOOD AND COMERCIAL WORKERS,  
LOCAL NO. 7,  
Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time meat department employees, including meatcutters, meat wrappers, and meat stockers, employed at the Employer's Thornton, Colorado store.

**EXCLUDED:** office clerical employees, guards, the meat department manager and other supervisors as defined in the Act, and all other employees.

#### STATEMENT OF THE CASE:

The Employer, Hyper Shoppes (Colorado), Inc, d/b/a bigg's, is engaged in the retail grocery industry at its Thornton, Colorado store. The Employer stipulated that it meets the Board's annual gross volume of business test with appropriate out-of-state purchases necessary for the Board to assert jurisdiction herein. The Petitioner seeks to represent a unit described as: "All meat cutters, meat wrappers and other meat department employees; excluding office clerical employees, guards and supervisors as defined in the Act and all other employees."<sup>1</sup> Contrary to the Petitioner, the Employer contends that if the store

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<sup>1</sup> At the hearing, the Petitioner amended its petition to exclude the meat department manager as a statutory supervisor. The meat department manager position is currently open and applicants are being sought. Based on the agreement of the parties, supported by the record evidence, that the former meat department managers possessed and exercised the authority to hire and fire meat department employees, and the absence of evidence that this authority will change when a new manager is selected, I shall exclude the meat department manger from the unit found appropriate herein.

is to be subdivided into units smaller than a storewide unit, the smallest appropriate unit must include the deli, seafood and meat departments.<sup>2</sup>

#### Background:

The store employs approximately 190 nonsupervisory employees and is principally managed by store manager Glenda Brewster. Reporting directly to Brewster are assistant managers Beth McCabe and Doug Hagerty, and various department managers, called “group managers.” These group managers include the currently vacant meat department manager position<sup>3</sup> and group manager Dale Sparks, who oversees both the seafood and deli departments. Assistant store manager Hagerty has assumed responsibility for the meat department during the meat manager vacancy.

The store itself consists of the traditional grocery store departments, including grocery, frozen foods, produce, dairy, health and beauty, and the meat, deli and seafood departments at issue herein. In addition, this store also sells clothing, shoes, domestic goods, electronics, automotive supplies, hardware, sporting goods, toys, garden items and furniture. The meat department is located along a wall on one side of the store. Along a different wall of the store are the seafood, and deli areas. In the corner between the meat department and the seafood and deli areas is the Employer’s bakery department.

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<sup>2</sup> According to record testimony, an NLRB election was held in 1997, pursuant to a stipulated election agreement, in a unit including the meat, deli and seafood departments.

<sup>3</sup> The most recent meat department manger was George Gonzales. He was hired from a competitor in approximately December 1999, and after extensive storewide training, he assumed the meat department manger duties for two to three weeks until he left on February 10, 2000, and took a position with the Petitioner.

All of the Employer's employees are subject to the same employment policies and enjoy identical benefits including health insurance, a 401(k) plan, and paid vacations. With the exception of meatcutters, all nonsupervisory employees are paid according to a single payscale. The so-called SSP scale ranges from entry level at \$6.75, to Level V at \$11.75. The meatcutter scale starts at an entry level rate of \$11.00 and goes up to a Level V rate of \$16.00. There is also a lead meatcutter rate of \$16.50.

Facts:

Meat Department:

There are currently six employees classified as meatcutters, one meat wrapper, and two meat stockers responsible for the so-called "hardpack" meat items sold by the meat department. The six meatcutters include one classified as lead (\$16.50), three at Level V (\$16.00), one at Level IV (\$15.00), and one at Level III (\$14.00). The sole meat wrapper is classified at Level II (\$13.00). The two meat stockers are paid on the SSP scale, not the meat department scale, and one is at Level V (\$11.75) on that scale and the other on Level IV (\$10.75). All of the meat department employees wear white butcher coats. Of the current meatcutters, four are long term employees who were hired with substantial meatcutting experience. The other two meatcutters and the meat wrapper had no prior meatcutting experience before transferring into the meat department from other positions in the store. These three have received only on-the-job

training. The Employer does not sponsor or participate in a traditional meatcutting apprenticeship program.

Meatcutters are scheduled to work seven days a week. Two meatcutters work a shift starting at 4:00 a.m. Another meatcutter or the meat wrapper start at 5:00 a.m. These three are responsible for assessing the meat case needs for the day, pulling out of code product, performing an initial cutting, grinding and wrapping session to fill the case at the start of the day, and then doing a follow-up session to prepare the backup product for restocking through out the day. They also clean and sanitize the entire meat cutting area daily. There is also a meatcutter scheduled daily from noon to 8:00 p.m. That meatcutter is primarily responsible for stocking the case with previously cut and packaged meat items, grinding additional ground beef as needed, and preparing special customer orders. The meatcutters also take turns ordering the incoming product that is delivered five times per week. All of the meatcutters and the wrapper answer the customer service bell and prepare special orders for customers. The two stockers order and stock prepackaged, name brand refrigerated meat products. One of the stockers works from 7:00 a.m. to 4:00 p.m. and the other works an evening shift.

The products handled by the meat department employees come in various forms. In addition to the fresh meat products handled by the meatcutters, the two stockers stock prepackaged products, which account for about 22% of the meat department sales volume. The meatcutters stock frozen, prepackaged meat, poultry and fish products equaling about 10% of the sales volume and fresh,

prepackaged poultry and pork products totaling about 14% of the sales volume. All of the above-noted prepackaged items require only to be placed in the coolers and freezers and rotated by code date.

With regard to the actual meatcutting and grinding duties accounting for the remaining 54% of the meat department sales volume, the record establishes that the fresh beef, pork and lamb is delivered to the store as box meat in the form of primals and subprimals, trimmed to ¼ inch of fat. There are about 14 different primals varying in weight from one pound to thirty pounds. All but two of the primals have the bone already removed. Those with the bone in are cut on the two meat band saws. The other primals are cut with knives ranging from six-inch blades to ten-inch blades. The meatcutters also operate the bone-scraping machine, which removes bone fragments from the sawed meat. The meatcutters and wrapper also make ground beef by feeding 10-pound chubbs of preground beef into the pan on the top of the freestanding grinder. The meat is fed into the actual grinding portion of the machine from that pan. The person operating the machine then retrieves that ground beef by hand, separating it into portions on trays. From there it is put on the meat rail to be sent to the automated wrapping machine which is used to wrap all the fresh meat products. All of the meatcutters and the wrapper also operate the wrapping machine on a daily basis.

Deli and Seafood Departments:

The seven deli employees and one seafood employee report directly to group manager Dale Sparks. The deli employees wear white chef's coats. The record is silent as to whether the seafood clerk wears a uniform. The deli employees are responsible for preparing salads and other foods such as grinding ham salad and preparing hot items such as Salisbury steak. They also slice meats and cheeses to order for customers. The deli department also carries case-ready lunchmeats which are ordered by the meat department stockers and stocked by the deli personnel. The meat slicers used in the deli are identical to those used in the meat department. The deli department employees also use a small meat grinder to make items such as the ham salad. This grinder, however, is similar to a home-version countertop food processor rather than the large, freestanding model used in the meat department.

While the record contains scant evidence regarding the seafood employee, it does establish that she orders, stocks and sells various fresh and frozen seafood items and shares the use of the non-automated food wrapper used by the deli employees.

Interchange:

The record establishes that the meat stockers occasionally fill in for deli clerks, although it is unclear how often this occurs. There is no evidence that deli employees ever work in the meat department. With regard to permanent transfers out of the meat department, the current deli/seafood manager was previously a meatcutter. A prior meat stocker and a prior meat manager also

transferred to the deli/seafood manager position. Former meat department employee Jamie Hendrickson currently works in non-food receiving. With regard to transfers into the meat department, current meatcutter Randy Mumford was formerly a deli clerk, current meat wrapper Ed Brown was a produce clerk, and current meatcutter Gary Ottosen also transferred into the meat department without prior meatcutting experience.

## **ANALYSIS**

### **Unit Determination:**

Initially, I note that the Employer urges the direction of an election in a unit consisting of the meat, deli and seafood departments based upon the fact that there was a previous Board conducted election in that unit in 1997 and the fact that the record fails to establish any changes in its departmental structure or the duties of its employees since then. The record is clear that the Board has not previously certified the Petitioner in a unit as a result of a Board Decision and Direction of Election. Because the 1997 election was based on a stipulated election agreement, it is not binding on the results herein. **Mid-West Abrasive Co.**, 145 NLRB 1665 (1964).

The Employer further urges that the meat, deli and seafood departments be included in a single unit, because they each begin with a highly perishable product that employees in these three departments process into saleable items using many of the same tools and skills. However, nothing in the Act requires that the unit found appropriate be the only appropriate unit, or even the most appropriate unit. **Overnight Transportation Company**, 322 NLRB 723 (1996);



**Brand Precision Services**, 313 NLRB 657 (1994). Thus, the Employer's argument that a combined unit of the meat, deli, and seafoods departments might constitute an appropriate unit is not controlling. The issue to be determined is whether the petitioned-for unit is appropriate under Board law. I conclude that it is an appropriate unit based on the record herein and shall direct an election in a unit including all meat department employees.

Initially, I note that the Board has long held that in the grocery industry, only meat department employees have enjoyed a presumption that a separate unit is appropriate.<sup>4</sup> While the Board held in **Scolari's** that meatcutters who work primarily with boxed primal and subprimal meat do not warrant the presumption of appropriateness historically afforded to craftsperson meatcutters, such employees, together with other meat department employees, may still constitute a separate appropriate unit as measured by the Board's traditional community-of-interest factors. **Wal-Mart Stores, Inc.**, 328 NLRB No. 126 (1999).

As set forth in **Scolari's** and cited in **Wal-Mart**, the factors relevant to the determination as to whether a separate meat department unit is appropriate include whether the work performed by the meatcutters involves substantial meatcutting skills that are distinct from the skills of other supermarket employees; whether specialized meatcutting skills is necessary for the processing of the

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<sup>4</sup> See **Scolari's Warehouse Markets, Inc.**, 319 NLRB 153 (1995), in which the Board stated: "Historically, the Board found that meat department units were presumptively appropriate because the meatcutters exercised a broad range of traditional meatcutter skills marking them as craftspeople. (Citations omitted.)" See also, **C & K Market, Inc. d/b/a Ray's Sentry**, 319 NLRB 724 (1995), in which the Board held that bakery/deli employees would be excluded from overall grocery units only in rare circumstances and distinguished the Board's holding in **Weber's I.G. A.**, 244 NLRB 594 (1979). In the

boxed meat; whether a substantial portion of the Employer's meat department business involves boxed meat; the training received by the meatcutters; the percentage of the meat department employees engaged in skilled meatcutting work; whether the meat department is separately supervised; the amount of interchange and transfer of employees between the meat department and other departments; and whether the employees in the proposed meat department receive higher wages than other store employees. See also, **K Mart Corporation d/b/a Super K Mart Center**, 323 NLRB 582 (1997).

The application of those considerations to the instant matter supports a finding that a separate meat department unit is warranted. Thus, the meatcutters at issue utilize substantial traditional meatcutting skills, as demonstrated by the fact that they are required to operate meat band saws and to utilize knives ranging from six-inch blades to ten-inch blades. Such skills are required to prepare meat for sale, which arrives at the store in portions ranging up to 30 pounds in size with the bone not already removed, and are distinct from the skills of other employees of the Employer, including the deli department employees. Further, approximately 54% of the meat department sales volume involves meat delivered to the store as box meat in the form of primals and subprimals.<sup>5</sup> Additionally, six of the nine meat department employees are meatcutters, a comparatively high percentage. While the Employer at issue utilizes on-the-job training for its new employees, this is consistent with the fact patterns in the other

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instant matter, because the Petitioner is not seeking to represent the bakery and deli employees, the holding in **Weber's I.G.A.** is of no consequence.

<sup>5</sup> In contrast, the percentage of such sales volume in **K Mart** was only 40%, and in **Wal-Mart** the Employer estimated the percentage of such sales volume at only 10%.

cases discussed herein and does not warrant a contrary finding. Moreover, given the substantial wage disparity between the meat department employees herein and their co-workers in other departments<sup>6</sup>, the training and skill of the meat department employees must be significant, because "It defies common experience and expectations that an employer would pay a premium to obtain skills that are not required nor utilized by the employer." **K Mart** at 587. As is noted above, the meat department has separate supervision from that of the deli/seafood departments and from the other departments in the store. Finally, I find that the amount of interchange and transfer between the meat department and other departments is not sufficient to overcome the weight of the other factors favoring the appropriateness of the petitioned-for unit.

There are approximately 9 employees in the unit found appropriate herein.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Undersigned among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.<sup>7</sup> Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an

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<sup>6</sup> The entry level wage for a meatcutter is more than 60 per cent higher than the entry level wage for employees in other departments under the SSP scale.

<sup>7</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting

economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

UNITED FOOD AND COMMERCIAL WORKERS , LOCAL NO. 7.

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969); **North Macon Health Care Facility**, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the **full** names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall

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aside the election whenever proper and timely objections are filed. Please see the attachment regarding the posting of election notice.

make the list available to all parties to the election. In order to be timely filed, such list must be received in the **Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-54533 on or before March 20, 2000.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **March 27, 2000.** In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 13th day of March, 2000.

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B. Allan Benson, Regional Director  
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